

Introduced by Senator Kehoe

February 27, 2009

An act to add Section 5096.519 to the Public Resources Code, relating to public lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 555, as introduced, Kehoe. Public lands: condemnation of conservation easement.

Existing law authorizes various agencies to acquire land for purposes related to conservation. Existing law establishes procedures for the independent appraisal review of land to be acquired for conservation and establishes a conservation easement registry. Existing law prohibits, with a specified exception, conservation lands from being sold to another owner or having possession and control transferred to another agency, unless specified actions occur.

This bill would prohibit a governmental entity from condemning a conservation easement acquired by a state agency or nonprofit land trust, unless specified procedures are followed. The bill would require the governmental entity to give the holder of the easement notice and an opportunity to state any objections to the condemnation. The bill would also require the governmental entity to prove by clear and convincing evidence that its proposed use satisfies statutory requirements that the condemnation be for compatible use and necessary for public use.

To the extent that this bill would impose new duties on a local governmental entity, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5096.519 is added to the Public Resources
2 Code, to read:
3 5096.519. (a) A governmental entity shall not condemn a
4 conservation easement acquired by a state agency or nonprofit
5 land trust, except as provided in subdivision (c).
6 (b) As used in this section, the following terms have the
7 following meanings:
8 (1) "Conservation easement" means a recorded conservation
9 easement, as defined in Section 815.1 of the Civil Code, that was
10 created to exist in perpetuity or will exist for at least 10 years and
11 that is acquired with state or local funds or charitable or income
12 tax resources, is held by a qualified entity, as defined in Section
13 815.3 of the Civil Code, and is administered primarily for retaining
14 land predominantly in its natural, scenic, historical, agricultural,
15 forested, or open-space condition.
16 (2) "Public use," as used in Article 6 (commencing with Section
17 1240.510) and Article 7 (commencing with Section 1240.610) of
18 Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure, means
19 privately owned lands managed for the protection of natural,
20 cultural, open-space, or recreational resources in public trust.
21 (c) (1) Prior to the initiation by a governmental entity of
22 condemnation proceedings against a property that is subject to a
23 conservation easement, the governmental entity shall do all of the
24 following:
25 (A) Give notice to the holder of the easement.
26 (B) Provide an opportunity for the holder of the easement to
27 consult with the governmental entity.

1 (C) Provide the holder of the easement the opportunity to state
2 its objections to the condemnation.

3 (D) Provide a response to the objections.

4 (2) Article 6 (commencing with Section 1240.510) and Article
5 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of
6 Part 3 of the Code of Civil Procedure shall apply to condemnation
7 proceedings initiated by a governmental entity against a
8 conservation easement. In those proceedings, the condemning
9 governmental entity shall be required to prove by clear and
10 convincing evidence that its proposed use satisfies the requirements
11 of Article 6 (commencing with Section 1240.510) or Article 7
12 (commencing with Section 1240.610) of Chapter 3 of Title 7 of
13 Part 3 of the Code of Civil Procedure.

14 SEC. 2. If the Commission on State Mandates determines that
15 this act contains costs mandated by the state, reimbursement to
16 local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.

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